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IN THE

Supreme Court of the United States

TERM, 194

No. 826

WILLIAM LEITHOLD and EMILY LEITHOLD, Individually and as Co-Partners trading as CUSTOM MAID BRASSIERE COMPANY,

Petitioners,

vs.

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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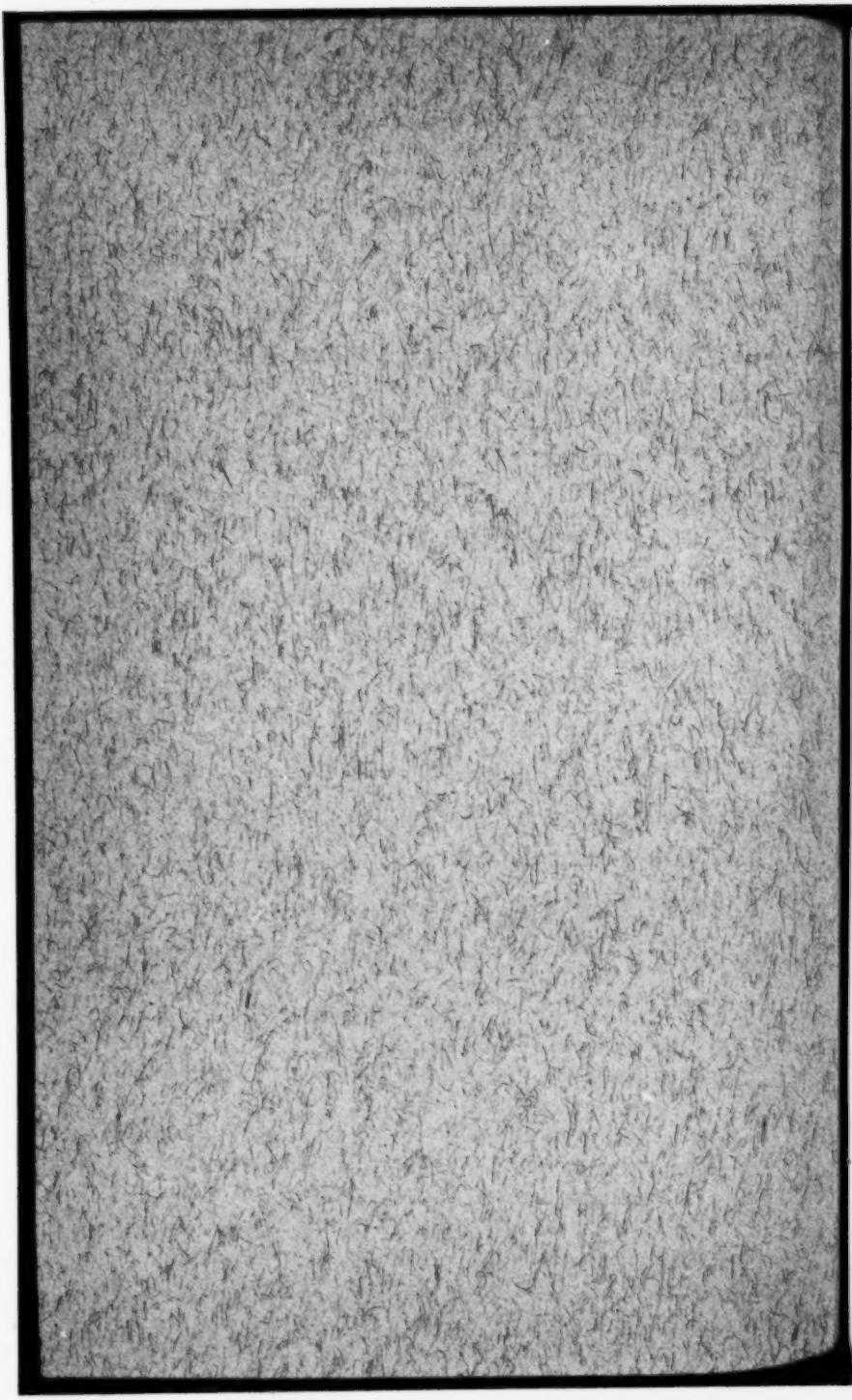

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IN THE

SUPREME COURT OF THE UNITED STATES

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No.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable, the Justices of the Supreme Court of the United States:

The Petition of William Leithold and Emily Leithold, individually and as Co-Partners, trading as Custom Maid

Brassiere Company, by their attorneys, Shapiro & Shapiro, Esquires, respectfully prays that a Writ of Certiorari issue to review the Order of the Circuit Court of Appeals for the Third Circuit entered December 27, 1945, affirming a judgment, order and decree entered by the District Court of the United States for the Eastern District of Pennsylvania.

List of abbreviations used hereinafter:

Office of Price Administration	OPA
General Maximum Price Regulation	GMPR
Maximum Price Regulation No. 220	MPR 220
National Labor Relations Board	NLRB

Statement of the Matter Involved.

This case involves the propriety of a decree enjoining defendants from violating price-ceilings fixed by OPA regulations, where defendants violated *record-keeping provisions* of the applicable regulations, but where there is neither allegation nor proof that the defendants violated or intended or threatened to violate *price-ceiling provisions* of those regulations. More narrowly, the question is whether the two types of acts are so related as to justify a broad injunction which includes a prohibition against acts not committed or threatened.

The Facts.

Plaintiff, Administrator of OPA, filed a Complaint seeking injunctive relief against defendants, manufacturers of brassieres, alleging that they had failed to maintain records required by GMPR, and failed to file with OPA information required by MPR 220 (R. 6a). There was no allegation that defendants violated or intended or threatened to violate any OPA price-ceiling.

In the course of the proceedings defendants admitted failure to keep the records required by GMPR, and failure to supply the information required by MPR 220; (R. 48a) but before hearing defendants complied with those provisions (R. 11a-12a). Defendants, however, have always kept the normal and usual business records (R. 42a, 45a).

There was no evidence that the defendants had violated or intended or threatened to violate price ceilings.

At the instance of the plaintiff, the District Court Judge enjoined the defendants, not only from further violations of *record-keeping provisions*, but also from violating *price-ceilings* with regard to the goods manufactured by them (R. 57-8a).

The two fundamental aspects of the regulations cited are (a) the record-keeping provisions, and (b) the price ceiling provisions.

The Circuit Court, remarking in its opinion that the question was new (R. 72a), based its affirmance of the District Court's injunction against price-ceiling violations upon the proposition that the defendants, by failing to maintain records required by GMPR, and failing to furnish OPA with information required by MPR 220, made it "practically impossible" for OPA to know whether defendants were violating price ceilings or not; and that as a consequence, it was not unlikely that price ceilings would be violated, and that it was not unreasonable to conclude that such a happening was within the range of probability, and to guard against it by injunction (R. 72a).

A footnote to the opinion (R. 72a) stated that the broad injunction was justified by the sufficiently close relation of records and prices, and by construing record-keeping provisions as a means to the end of ceiling-price control.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 938, U.S.C. Title 28, Section 347). The order, judgment or decree of the United States Circuit Court of Appeals for the Third Circuit to be reviewed was entered December 27, 1945.

The Questions Presented.

(a) In an action by the Administrator of OPA for injunctive relief against a manufacturer of women's garments, where the only violation complained of is in failing to observe the record-keeping provision of the pertinent regulation, there being neither allegation nor proof that the defendant sold or threatened to sell his products at prices in excess of maximum ceiling prices, may the Trial Judge enter a decree enjoining defendant from, inter alia, selling at prices in excess of the ceiling-prices set up in the regulation?

(b) In such a case, is there a sufficiently close relation between failure to keep records and charging over-ceiling prices, so as to justify the broad scope of the injunction?

(c) In such a case, does a Court have the discretionary power to enter an injunction of such broad scope?

Reasons for Allowance of Writ.

The grounds relied upon by the petitioners for the allowance of the Writ are:

1. In holding that record-keeping violations of themselves justified the restraint of price-ceiling violations not charged, committed or threatened, and in the absence of any finding of fact that a price-ceiling violation was threatened or might be anticipated, the Circuit Court of Appeals for the Third Circuit has decided a federal question in a way probably in conflict with applicable decisions of this Court, as follows:

New York, New Haven and Hartford, etc. R. Co. v. Interstate Commerce Commission, 200 U.S. 361, 26 S. Ct. 272, 50 L. Ed. 515.

N.L.R.B. v. Express Publishing Co., 312 U.S. 426, 61 S. Ct. 593, 85 L. Ed. 930.

May Department Stores Co. v. N.L.R.B., U. S. Supreme Court, Oct. Term, 1945, No. 39, decided Dec. 10, 1945.

2. In holding that records and prices are sufficiently closely related under the rule of the Express Publishing case, *supra,* to justify a broad injunction, the Circuit Court of Appeals for the Third Circuit has rendered a decision in conflict with the decision of the Circuit Court of Appeals for the Second Circuit on the same matter: Bowles, Administrator OPA v. Sacher, et al., 146 F. 2nd 186.

3. The Circuit Court of Appeals for the Third Circuit has decided a specific important question of federal law which has not been but should be settled by this Court, to wit, whether violation of record-keeping provisions of OPA regulations per se justifies an injunction against price-ceiling violations which are not alleged, proven or shown to be intended, threatened or likely to occur.

Prayer.

WHEREFORE, your petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding that Court to certify to and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the Record and all proceedings in the case numbered and entitled on the Docket of the Circuit Court of Appeals for the Third Circuit October Term, 1945, No. 8980, between Chester Bowles, Administrator, Office of Price Administration, appellee, and William Leithold and Emily Leithold, individually and as co-partners trading as Custom Maid Brassiere Company, appellants; and that the judgment or order of the Circuit Court for the Third Circuit be reversed by this Honorable Court, with directions that so much of the District Court Decree as enjoined violation of price-ceiling provisions of any act or regulation be stricken therefrom; and that your petitioners may have such other and further relief in the premises as may seem just and proper.

And your petitioners will ever pray.

ABRAHAM L. SHAPIRO,
SHAPIRO & SHAPIRO,
Attorneys for Petitioners.

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SUPREME COURT OF THE UNITED STATES.

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NO.

WILLIAM LEITHOLD and EMILY LEITHOLD, Individually and as Co-Partners trading as CUSTOM MAID BRASSIERE COMPANY,

Petitioners,

vs.

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions Below.

Both the Court below and the District Court wrote opinions. The opinion of the Court below appears in the record at Page 66.

This opinion has not yet been reported in the official reports. The opinion of the District Court appears in the record at Page 45, and is published in 60 Fed. Supp. 909.

Jurisdiction.

The grounds on which jurisdiction of this Court is invoked is set forth in the Petition at Page 4 thereof.

Statement of the Matter Involved.

The statement of the matter involved appears in the Petition at Pages 2-3 thereof, and in the interest of brevity is not repeated herein.

Specification of Errors.

The errors which petitioners will urge if Writ of Certiorari be granted are that the Circuit Court of Appeals for the Third Circuit erred

1. In affirming the judgment of the District Court;

2. In holding that a violation of only the record-keeping provisions of GMPR and MPR 220 is a sufficient basis for the granting of an injunction against price-ceiling violations of the same regulations, despite the fact that the defendants kept and maintained the usual and normal business records, and despite the fact that it was not alleged, proved or found that the defendants had violated such price-ceiling provisions, or that they intended or threatened to violate them, or that such violation might be anticipated from the conduct of the defendants in the past.

Satutes Involved.

Emergency Price Control Act of 1942 (56 Stat. 23) as amended, 50 U.S.C.A. App. Section 925(a), 56 Stat. 33:

Sec. 4(a) (50 U.S.C.A. App. Section 904(a), 56 Stat. 28): Section 20(a) (50 U.S.C.A. App. Section 902(a) 56 Stat. 28).

GMPR (7 F.R. 3153 et seq.) Sections 11 and 12.
MPR 220, Sections 1315, 1557 (7 F.R. 7282).

NOTE: In the following argument, all italics used in quoting from judicial or text-book authorities are supplied.

ARGUMENT.

WHERE THE ONLY VIOLATION COMPLAINED OF IS FAILING TO OBSERVE THE RECORD-KEEPING PROVISION OF THE REGULATION, SHOULD THE COURT GRANT AN INJUNCTION AGAINST VIOLATING PRICE CEILINGS ESTABLISHED BY THE REGULATION?

As to the General Law on the Scope of Injunctions.

This Court has held that violation of one particular of a statute does not justify an injunction against violating the statute in any particular: New York, New Haven & Hartford, etc. R.R. v. I. C. C., 200 U. S. 361, 265 S. Ct. 272, 50 L. Ed. 515. There a carrier had violated a statute by entering into contracts to carry freight for less than its published rates. The District Court enjoined the carrier from carrying out the contracts. The Interstate Commerce Commission appealed because it had requested a broader injunction commanding the carrier "perpetually to observe in the future its published rates." As to this, the Supreme Court of the United States, speaking through the then Chief Justice White, said:

> "The contention, therefore, is that, whenever a carrier had been adjudged to have violated the act to regulate commerce in any particular, it is the duty of the Court, not only to enjoin the carrier from further like violations of the act, but to command it in general terms not to violate the act in the future in any particular. *In other words, the proposition is that, by the effect of a judgment against a carrier concerning a specific violation of the act, the carrier ceases to be under the protection of the law of the land, and must thereafter conduct all its business under the jeopardy of punishment for contempt for violating a general injunction. To state the proposition is, we think, to answer it.* . . . To accede to the doctrine relied upon would compel us, *under the guise of protecting freedom of commerce, to announce a rule which would be destructive of the fundamental liberties of the citizen.*" (50 L. Ed. pp. 526-7.)

And this Court restricted the injunction to one enjoining the Railroad from taking less than its published rates, *by means of dealing in the purchase and sale of coal.*

The same rule of law is laid down in 28 Am. Jur. 473:

> "If the wrongs complained of and against which injunctive relief is sought are alleged violations of a statute in certain particulars, *the decree may restrain the defendant from further like violations of the act, but should not enjoin in general terms violations of the act in the future in any particular, because an injunction of such general character would be violative of the elementary principles of justice, in that it would compel the defendant thereafter to conduct himself and his business under the jeopardy of punishment for contempt for violating a general injunction.*"

It is to be noted that the railroad case and the text authority just cited touch directly upon the question here.

As to the Relation Between Records and Prices.

The Express Publishing case[1] elaborated to some extent upon this rule of law, stating that "a federal court has broad power to restrain acts which are of the same type or class as unlawful acts which the court has found to have been committed or whose commission in the future, unless enjoined, may fairly be anticipated from the defendant's conduct in the past (85 L. Ed. 937).

And this Court went on to say immediately afterward:

> *"But the mere fact that a court has found that a defendant has committed an act in violation of a statute does not justify an injunction broadly to obey the statute and thus subject the defendant to contempt proceedings if he shall at any time in the future commit some new violation unlike and unrelated to that with which he was originally charged.* This court will strike from an injunction decree restraints upon the commission of unlawful acts as thus dissociated from those which a defendant has committed."

And the opinion continued:

> "It is a salutary principle that when one has been found to have committed acts in violation of a law he may be restrained from committing other related unlawful acts. *But we think that without sacrifice of that principle, the National Labor Relations Act does not contemplate that an employer who has unlawfully refused to bargain with his employees shall for the indefinite future, conduct his labor relations at the peril of a summons for contempt on the Board's allegation, for example, that he has discriminated against a labor union in the discharge of an employee, or because his*

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[1] NLRB v. Express Publishing Co., 312 U.S. 46, 61 S. Ct. 593, 85 L. Ed. 930.

supervisory employees have advised other employees not to join a union." (85 L. Ed. 937).

Clearly, there is as close a relation between refusal to bargain and discrimination (in a labor case) as there is between records and prices (in an OPA case): yet this Court has stated that the relationship is *not* sufficiently close to justify a restraint upon the act not committed.

It will thus be seen that the Express Publishing case restates principles enunciated in the New York, New Haven and Hartford case, *supra*, and leaves for determination only the narrow question whether the price ceilings of the regulation in question are so related (in the sense of the Express Publishing case) to record-keeping provisions, as to justify an injunction against one based upon violation only of the other.

Upon this point we have the decision of the Second Circuit answering the question in the negative: Bowles v. Sacher, 146 F 2d 186. The Court said at Page 187:

> "The appellant contends that because the appellees had violated the record-keeping requirements of the regulations and because the court found that failure to keep the required records creates 'danger of noncompliance with the provisions prescribing legal maximum prices', violations of the price limitations is a 'practical certainty.' But the District Judge drew no such inference; *nor do we.* The finding that lack of records produces danger of violation of the ceiling prices furnishes support for the injunction restraining the appellees from making sales 'unless and until' they prepare and keep the required records, and for the mandatory order directing them forthwith to do so; *but it does not compel an inference that they will sell above the legal maximum prices after they have established the required records.* Indeed, the natural inference is just the reverse, since price violations, if committed, can be more easily detected once the records

are established. Moreover, the plaintiff's affidavits contain no charge that the appellees have ever committed any violation of the regulations other than the failure to keep records."

The facts and the issues in the Sacher case exactly parallel those in the instant case: and the words just quoted from the majority opinion (one Judge dissented) constitute the clearest possible conclusion that record-keeping violations are not related to price-ceiling violations in the sense of the Express Publishing case. The Second Circuit was aware of that case, as shown by the fact that the dissenting Judge referred to it.

In accord with the conclusions reached in the Sacher case are also the following District Court cases:

Bowles v. Fisher & Co., Inc., 1 Price Control Cases, Section 51,027;

Bowles v. Sport Welt Shoe Co., Inc. (D.C.Mass.) 1 OPA Op. & Dec. Page 1181.

The plaintiff failed to cite a single case in his briefs, either in the Court below or in the District Court, where an injunction of so broad a scope was granted in any similar OPA case.

There Was No Finding of Fact That Price-Ceiling Violations Were to Be Anticipated.

The May Department Stores case, *supra*, interposes another obstacle to the broad injunction. There NLRB had imposed a cease and desist order covering, inter alia, acts not committed. This Court struck down that part of the order, saying at page 12 of the opinion:

"We think that, in the circumstances of this proceeding, although there is a violation of Section 8 (1) as well as 8 (5), the violation of 8 (1) is so intertwined

with the refusal to bargain with a unit asserted to be certified improperly *that without a clear determination by the Board of an attitude of opposition to the purposes of the Act* to protect the rights of employees generally, the decree *need not* enjoin Company actions which are not determined by the Board to be so motivated."

Since in the instant case there is *no* determination (i. e. no fact finding) or evidence that violation of price-ceilings are threatened or to be anticipated (let alone committed), there should be no injunction against such violation.

The Basis of the Opinion of the Court Below.

The opinion below accepts the plaintiff's contention that failure to maintain records and furnish information required by the regulations made it "practically impossible" for OPA to discover whether defendants were violating price ceilings or not (R. 72a).

If this conclusion is supposed to be reached on some factual basis, then the clear answer is that there is not a shred of evidence in the record to support it.

If the conclusion was reached by the Court below on the basis of reasoning or logic, then the answer is that the conclusion is erroneous. Price ceilings are fixed in the applicable regulations upon the basis of the prices at which sales were made in a base period: or on competitors' prices in the base period: or by a formula based on nearest comparable commodities sold. Except for competitors' prices, (as to which OPA has better access than the defendants), all the records required to be kept by GMPR, and all the information required to be furnished by MPR 220, are simply taken by the seller from his own business records. It is true that maintaining the required records and furnishing the required information renders access to the data

easier and *more convenient:* but the failure to maintain the records or file the information certainly cannot and does not make detection of price ceilings "*practically impossible.*" All OPA has to do is have its accountants go over the normal and usual business records (they are subject to subpoena if access is refused) and make up the required records and information from them. Despite violation of record-keeping provisions, therefore, it is perfectly feasible and possible—and not even difficult—for OPA to detect price-ceiling violations.

Conclusion.

A. It is a general principle of law that acts neither committed nor threatened should not be enjoined: New York, New Haven and Hartford R.R. Co. v. Interstate Commerce Commission, *supra.*

B. Records and prices are not so closely related as to justify an injunction against price-ceilings when there has been no violation thereof: N.L.R.B. v. Express Publishing Co., *supra;* Brown v. Sacher, *supra.*

C. Acts not committed should not be enjoined unless there is a clear determination, i. e., a fact-finding, that they may fairly be anticipated from other violations closely enough related: May Department Stores v. N.L.R.B., *supra.* In the case at bar there was no such closeness of relation and no determination that the violation of price-ceilings might be anticipated.

D. Violation of record-keeping provisions do not make it practically impossible or even difficult to detect price-ceiling violations.

E. Certiorari should be granted, so that the decree of the District Court may be modified by striking therefrom the restraint against violation of price-ceilings.

Respectfully submitted,

ABRAHAM L. SHAPIRO,
SHAPIRO & SHAPIRO,
Attorneys for Petitioners.

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CITATIONS

685330—46

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 826

WILLIAM LEITHOLD AND EMILY LEITHOLD, INDIVIDUALLY AND AS CO-PARTNERS TRADING AS CUSTOM MAID BRASSIERE COMPANY, PETITIONERS

v.

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 45a–57a) is reported in 60 F. Supp. 909. The opinion of the circuit court of appeals (R. 66–75) is not yet reported.

JURISDICTION

The judgment of the circuit court of appeals was entered on December 27, 1945 (R. 75–76). The petition for a writ of certiorari was filed on February 9, 1946. The jurisdiction of this Court

is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 25, 1925.

QUESTION PRESENTED

Upon a showing that petitioners had consistently violated the record-keeping requirements of certain price regulations to which they were subject, did the district court abuse its discretion in enjoining not only further violation of record-keeping provisions but likewise violation of price ceilings established by those regulations, even though price violations had not been alleged or proved?

STATUTE INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, (56 Stat. 23; 50 U. S. C. App. 901, *et seq.*, as amended by the Stabilization Extension Act of 1944, 58 Stat. 632, 50 U. S. C. App. Supp. IV, 901, *et seq.*) are Sections 4 (a), 202, and 205 (a). Section 4 (a) provides:

> It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accord-

ance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

Section 202 provides:

(a) The Administrator is authorized to make such studies and investigations, to conduct such hearings, and to obtain such information as he deems necessary or proper to assist him in prescribing any regulation or order under this Act, or in the administration and enforcement of this Act, and regulations, orders, and price schedules thereunder.

(b) The Administrator is further authorized, by regulation or order, to require any person who is engaged in the business of dealing with any commodity, or who rents or offers for rent or acts as broker or agent for the rental of any housing accommodations, to furnish any such information under oath or affirmation or otherwise, to make and keep records and other documents, and to make reports, and he may require any such person to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of defense-area housing accommodations. The Administrator may administer oaths and affirmations and may, whenever necessary, by subpena require any such person to appear and testify or to appear and produce documents, or both, at any designated place.

Section 205 (a) provides:

> Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

STATEMENT

Petitioners, as co-partners engaged in the manufacture of brassieres, were, without dispute, subject to the provisions of the General Maximum Price Regulation (GMPR), 7 F. R. 3153, and Maximum Price Regulation (MPR) 220, 7 F. R. 7282. Sections 1499.11 and 1499.12 of the GMPR required the preparation and retention of a base period statement and current pricing records. See Appendix, *infra,* pp. 13–14. Section 1315.-1557 of MPR 220 required certain additional reports to be filed with the Office of Price Administration. Records are required by the regulations because, under the method of price fixing which these regulations embody, the records are nec-

essary to enable a seller to establish and know his own ceilings and to enable the public and Office of Price Administration to check whether he is abiding by them.[1]

For a period of twenty-seven months after the GMPR went into effect, petitioners failed to provide the information required by that regulation (R. 48a). Petitioners likewise paid no attention

[1] Thus, for example, the General Maximum Regulation (7 F. R. 3153), the general regulation to which petitioners were subject, provides four pricing methods. Section 2 (a) fixes maximum prices at the highest price charged by the seller during March 1942 for the same or similar commodities. If the seller did not sell the same or similar commodities during March 1942, Section 2 (b) fixes his maximum prices at the highest prices charged during March 1942 by his most closely competitive seller for the same or similar commodities. If he has no competitive seller whose prices can be used as a standard, Section 3 provides a formula based on his maximum prices for his most comparable commodities. Finally, if the seller is unable to determine a maximum price under the preceding provisions, he is directed to file an application with the Office of Price Administration for approval of a proposed maximum price.

It will be seen that this pricing system requires the retention of necessary data in readily usable form. Neither the seller nor the Office of Price Administration can tell what the seller's maximum prices are unless he has some sort of statement showing precisely what types of commodities he sold during the base period, what the prices for those commodities were, and what precise types of commodities he sells currently. In addition, it is often essential, under these price-fixing methods, that the seller have the data concerning the comparability of various commodities. Sections 11 and 12 of the General Maximum Price Regulation specify what records must be kept. Appendix, *infra*, pp. 13–14.

to the provisions of MPR 220, requiring that reports be filed (R. 48a).

In order to bring petitioners into compliance with these regulations, respondent brought this action under Section 205 (a) of the Act (R. 3a–7a). As relief, respondent requested an injunction directing petitioners to prepare and keep for examination the records required by the GMPR; directing petitioners to file the reports required by MPR 220; restraining petitioners from selling any commodities subject either to the GMPR or MPR 220 until they had so complied; and restraining petitioners from selling such commodities at prices in excess of the maximum prices established by those regulations[2] (R. 6a-7a).

Petitioners admitted the charges of violations, but claimed that since the filing of the bill they had complied with the record-keeping requirements of the GMPR, and that, in any event, the injunction should not extend to price violations of which there was no proof (R. 46a). The district court, in the exercise of its discretion, granted the full relief requested by the complaint (R. 57a–

[2] The opinion of the district court points out that defendants claimed they had discontinued the manufacture of elastic garments and thus were no longer subject to MPR 220 (R. 46a). The court's decree, however, guards against future record-keeping and price violations of MPR 220 (R. 57a–58a), and, apparently, no particular question as to that provision of the injunction is raised here.

58a). On appeal from this order, the Circuit Court of Appeals for the Third Circuit affirmed, concluding that on the "set of facts" before it, there was no abuse of discretion shown (R. 66–75).

ARGUMENT

1. In refusing to disturb the trial court's exercise of discretion in restraining price-ceiling violations, where petitioners had, for more than two years, consistently violated the record-keeping requirements of the regulations, the court below rendered a decision wholly in keeping with applicable decisions of this Court. It paid heed to the admonition of this Court in *Hecht Co.* v. *Bowles,* 321 U. S. 321, that discretion under Section 205 (a) "must be exercised in light of the large objectives of the Act" (p. 331), and to the report of the Senate Committee in charge of the Price Bill, which said, with respect to Section 205 (a) of the Act, that "Such courts are given jurisdiction to issue whatever order to enforce compliance is proper in the circumstances of each particular case". S. Rep. No. 931, 77th Cong., 2d sess., p. 10.

Section 205 (a), *supra,* p. 4, authorizes the issuance of decrees of the broadest sort. Their permissible scope is defined by reference to the violations set out in Section 4 of the Act. *Supra,* p. 2. The order for which the Administrator is authorized to apply is "an order enjoining such acts or practices", and the "acts or practices"

referred to are described in the opening clause of Section 205 (a) as "any acts or practices which constitute or will constitute a violation of any provision of section 4". Section 4, in turn, embraces all violations of all price regulations.

The claim of petitioners that the decision of the court below is inconsistent with applicable decisions of this Court, notably *New York, New Haven & Hartford R. R. Co.* v. *Interstate Commerce Commission,* 200 U. S. 361, is without merit.

In that case, the Interstate Commerce Commission contended that "whenever a carrier has been adjudged to have violated the act to regulate commerce in any particular it is the duty of the court, not only to enjoin the carrier from further like violations of the act, but to command it in general terms not to violate the act in the future in any particular." 200 U. S. at 404. This Court held that such an injunction was objectionable in that it was too vague and subjected a person to the "jeopardy of punishment for contempt for violating a general injunction" *ibid.*[3] In the case at bar, however, petitioners run no such risk

[3] In one respect, the decree of the court was broadened. The Chesapeake and Ohio Railroad Co. had violated the Elkins Act by contracting to sell coal at a price which included carrying charges below its published tariff. Overruling the lower court's decision which limited the injunction to the particular contract involved, the Supreme Court extended its scope by "perpetually enjoining the Chesapeake and Ohio from taking less than the rates fixed in its published tariff of freight rates, by means of dealing in the purchase and sale of coal." 200 U. S. at 405.

if an injunction is granted restraining them from violating the price ceilings established by the GMPR and MPR 220. This is not a decree couched in vague or general terms. By its express terms, petitioners are informed, as accurately and exactly as the case permits, as to what they are forbidden to do. Petitioners could not mistake the bounds of the injunction since pricing formulas and pricing requirements are plainly contained in the specified regulations; and by complying with the record-keeping requirements, petitioners will be in a position to know what their maximum prices are.

2. To safeguard the public interest, the scope of an injunction must be such as will prevent violations, the threat of which are to be anticipated "because of their similarity or relation" to those unlawful acts which are charged and proven. *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, 437. Price-ceiling violations "bear some resemblance" or "relation" to those which petitioners have committed in disregarding record-keeping requirements, and "danger of their commission in the future" is to be anticipated from the petitioners' course of conduct in the past. *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. at 436. The effect of petitioners' conduct, the court below noted, "was as complete a disregard of the wartime control statute as if they were operating at the North Pole" (R. 71).

Actually, petitioners' complete indifference to the record-keeping requirements makes their conduct more reprehensible than a seller's who compiles his records but merely sells certain items at prices in excess of the ceiling. Petitioners have made absolutely no effort to comply at all. For over two years they lived as though there were no price control, meanwhile securing for themselves a special and favored position as compared to competitors who had complied with the Act. The courts below were justified in believing that a defendant who made it "practically impossible" for anyone to determine whether price ceilings were violated, was "not unlikely to violate those ceilings under cover of the darkness which his failure to give information had created" (R. 72). And even if by some chance price violations do not in every instance flow from failure to comply with record keeping requirements, "At least it is not unreasonable for one to conclude that such a happening is within the range of probability and to guard against it by injunction" (R. 72).

The decision of the court below, "on a set of facts not heretofore dealt with by * * * any other of the Circuit Courts of Appeals" (R. 74), is not, as petitioners claim, in conflict with the decision of the Circuit Court of Appeals for the Second Circuit in *Bowles* v. *Sacher,* 146 F. 2d 186, but is consistent therewith. In that case, the circuit court of appeals, indicated that, on the motion for a preliminary injunction before trial, it

knew nothing of defendant's motives, wilfulness or negligence and added, "This is not to say that an injunction should never be issued broader in scope than the violations actually proved; a decision of that question may properly await a case which presents it". Here, the question arises after final hearing (R. 46a) and the district court found no justification for petitioners' failure to keep records. And here, as in *Bowles* v. *Sacher, supra,* at 187, the court below could find "no abuse of discretion and on this ground" affirmed the judgment of the trial court.

3. The court below did not, as petitioners claim, hold that "violation of record-keeping provisions of OPA regulations per se justifies an injunction against price-ceiling violations which are not alleged, proven or shown to be intended, threatened or likely to occur." (Pet. 5.) The decision of the court below was specifically limited to the "set of facts" before it, under which petitioners failed for twenty-seven months after the Regulation became effective to provide the information required, thereby rendering almost impossible a showing of price-ceiling violations, no matter how often repeated.

From petitioners' continued living outside the Act so far as record-keeping requirements were concerned, the trial court concluded that it was not unreasonable to anticipate the commission of price violations in the future unless enjoined. And the circuit court of appeals did not think this

conclusion was so clearly erroneous as to set it aside.[4] There is no warrant for further review, by this Court, of the narrow issue in this case.

CONCLUSION

The decision of the court below is correct and is not in conflict with applicable decisions of this Court or with the decision of any circuit court of appeals. For these reasons, and the reasons set out above, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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[4] The court below was of the opinion that this Court's recent decision in *May Department Stores Company* v. *N. L. R. B.*, No. 39, this Term, strengthens the conclusions reached by it. "Our particular situation is, we think, blanketed by the sentence: 'Injunctions in broad terms are granted even in acts of the widest content, when the court deems them essential to accomplish the purposes of the act.'" (R. 75.)

APPENDIX

The pertinent Sections of the General Maximum Price Regulations are:

SECTION 1499.11:

Base-period records.—Every person selling commodities or services for which, upon sale by that person, maximum prices are established by this General Maximum Price Regulation, shall:

(a) Preserve for examination by the Office of Price Administration all his existing records relating to the prices which he charged for such of those commodities or services as he delivered or supplied during March 1942, and his offering prices for delivery or supply of such commodities or services during such month; and

(b) Prepare, on or before July 1, 1942, on the basis of all available information and records, and thereafter keep for examination by any person during ordinary business hours, a statement showing:

(1) The highest prices which he charged for such of those commodities or services as he delivered or supplied during March 1942 and his offering prices for delivery or supply of such commodities or services during such month, together with an appropriate description or identification of each such commodity or service; and

(2) All his customary allowances, discounts, and other price differentials.

Section 1499.12:

Current records.—Every person selling commodities or services for which, upon

sale by that person, maximum prices are established by this General Maximum Price Regulation shall keep, and make available for examination by the Office of Price Administration, records of the same kind as he has customarily kept, relating to the prices which he charged for such of those commodities or services as he sold after the effective date of this General Maximum Price Regulation; and, in addition, records showing, as precisely as possible, the basis upon which he determined maximum prices for those commodities or services.

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